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IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1975

NO. 75-337

FREDERICK W. COPELAND,

Petitioner,

v.

PEOPLE OF THE STATE OF FLORIDA, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Apparently, petitioner seeks to have this Court review an order of the Fifth Circuit Court of Appeals which denied his Motion to Appeal out of time. The challenged Order states:

> "It is ordered that the motions filed by petitioner for leave to docket the above referenced appeals out of time are denied."

In his application, petitioner discusses the merits of his alleged claim which are almost identical to the argument he advanced in the United States District Court for the Middle District of Florida.

HISTORY OF THE CASE

This suit was initiated in the United States District Court for the Middle District of Florida, upon a complaint alleging that petitioner was victimized by a mysterious public broadcasting perpetuated by certain known and unknown individuals. It was further alleged that a local state attorney conducted an investigation of this matter and petitioner was not allowed to participate therein or receive the results thereof. On these allegations petitioner sued the State of Florida, the Governor of Florida and the Attorney General of Florida. In his prayer for relief petitioner sought the impanelment of a Federal Grand Jury and access to a copy of the report of the alleged investigation conducted by the local state attorney. Accordingly, this suit appears injunctive in nature.

On December 12, 1974, all defendants-respondents moved to dismiss petitioner's Complaint on grounds of lack of jurisdiction over the subject matter and failure to state a claim upon which relief could be granted. On January 17, 1975, the District Court granted Respondents' Motion and dismissed petitioner's complaint with prejudice. The basis of dismissal was that the District Court lacked subject matter jurisdiction. Petitioner next filed a Motion for Rehearing which the District Court denied on January 27, 1975. On April 28, 1975, petitioner filed a motion in the District Court seeking leave to appeal out of time. This

motion was denied on the 2nd day of May, 1975. During the early part of May, 1975, petitioner thereafter filed a Motion for Leave to Appeal out of Time in the United States Court of Appeals, Fifth Circuit. On June 11, 1975, the Fifth Circuit denied Petitioner's motion.

JURISDICTION

Petitioner has totally failed to show any special or important reason for granting certiorari in this case. His application does not include any jurisdictional statement as required by Rule 22, Rules of the Supreme Court of the United States. In fact, at no stage in these proceedings has petitioner alleged any basis for Federal Court jurisdiction over the claims he seeks to advance. Respondents submit that there is no jurisdictional basis on which a Federal court may adjudicate petitioner's claims.

It is elementary that Federal courts are without jurisdiction to entertain claims that do not arise under the laws or Constitution of the United States. 28 USC §1331. Only those rights, privileges and immunities that are secured by the Constitution of the United States, or some act of Congress, are within the protection of federal courts. Gustason v. California Trust Co., 73 F.2d 765 (9th Cir.), cert.den. 296 U.S. 607, 80 L. Ed. 430 (1935). Rights, privileges, and immunities not derived from the Federal Constitution, or secured thereby, are left exclusively to the protection of the

states.

In order to properly invoke federal court jurisdiction, petitioner must allege that a person acting under color of state law deprived him of some right secured by the Constitution or laws of the United States. W. Barron & A. Holtzoff, Federal Practice §37 (Wright Ed., 1960). In this case, petitioner has failed to meet this requirement in that the persons responsible for harassing the petitioner are not alleged to have acted under color of state law. Nor does petitioner allege that the persons who allegedly harassed him are domiciled in a state different from his own place of residence. Thus, federal court jurisdiction pursuant to diversity of citizenship is inappropriate. These fatal deficiencies completely nullify the existence of any federal question which is a condition precedent to the exercise of federal court jurisdiction. Baker v. Carr, 82 S.Ct. 691, 369 U.S. 186, 7 L. Ed. 2d 663 (1962); Stanturf v. Spies, 335 F.2d 224, cert.den., 85 S.Ct. 676, 379 U.S. 977, 13 L. Ed. 2d 567 (1965).

CONCLUSION

Petitioner has failed to allege facts which invoke federal court jurisdiction. Accordingly, his Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that I, Thomas A. Harris, one of the attorneys for the Respondents herein, and a member of the Bar of the Supreme Court of the United States, on the _____day of October, 1975, served a copy of the foregoing Brief for Respondents in Opposition to Petition for Writ of Certiorari on the Petitioner by mailing a true and correct copy in a duly addressed envelope with first-class postage affixed, to Frederick W. Copeland, P. O. Box 523, Crystal River, Florida 32629.

THOMAS A. HARRIS
Assistant Attorney General